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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,444	01/23/2004	Andrew Halliday	67641	7421
48940	7590	10/15/2007		
FITCH EVEN TABIN & FLANNERY 120 S. LASALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			EXAMINER ALEXANDER, REGINALD	
			ART UNIT	PAPER NUMBER
			3742	
			MAIL DATE	DELIVERY MODE
			10/15/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/763,444

Applicant(s)

HALLIDAY ET AL.

Examiner

Reginald L. Alexander

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 and 23 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-8 is/are allowed.
- 6) ☒ Claim(s) 1,2,9-13 and 18-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Newly submitted claim 23 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: There is no dispensing of a beverage.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 23 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyd et al. in view of Sargent and Gutwein et al.

There is disclosed in Boyd a beverage preparation system, comprising: a plurality of beverage cartridges 10 having code 30 written thereon; means 114, 116 for receiving one of the plurality of cartridges and means 110 for supplying an aqueous medium; a reader 130 for automatically interpreting the code; processing means 140 for creating specific brewing cycle based on the code; means 150 for automatically adjusting a temperature of the aqueous medium based on the code.

There is disclosed in Sargent a beverage cartridge including different means (foaming agents, filters, apertures) for producing foaming of the beverage.

There is disclosed Gutwein et al. a user interface for initiating an operating cycle of a beverage preparation system, the cycle being independent of a beverage type being dispensed by the system.

It would have been obvious to one skilled in the art to provide cartridges of Boyd with the foaming means taught in Sargent, in order to produce a foaming liquid beverage.

It would have been obvious to one skilled in the art to provide the device of Boyd with the user interface taught in Helberg, in order to allow a user to make automatic selections of various types of beverages.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9-13 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Boyd et al.

There is disclosed in Boyd a beverage preparation system, comprising: a plurality of beverage cartridges 10 having code 30 written thereon; means 114, 116 for receiving one of the plurality of cartridges and means 110 for supplying an aqueous medium; a reader 130 for automatically interpreting the code; processing means 140 for

creating specific brewing cycle based on the code; means 150 for automatically adjusting a temperature of the aqueous medium based on the code.

In regards to the operating characteristics of the beverage preparation system stored by the memory, it is the opinion of the examiner that the various brewing directives (instructions) are characteristics of the machine. Since the machine must perform functions such as brewing water temperature changes and flow rates, such are considered characteristics of the machine.

In regards to claims 20-22, the recited functions of the device as a result of the information stored in the memory, are a result of user preferences for the memory. They do not constitute a structural limitation.

Allowable Subject Matter

Claims 3-8 are allowed.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3742

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

rla
13 October 2007


Reginald L. Alexander
Primary Examiner
Art Unit 3742